The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STONCOR GROUP, INC., Plaintiff, v. CHRISTOPHER CAMPTON, an individual, and HI-TECH INTERIORS, INC., Defendants.	)	No. CV05-1225 DEFENDANT'S MOTION TO COMPEL DISCOVERY

Defendant Christopher Campton ("Defendant" or "Campton") submits this motion to compel the plaintiff to fully disclose: (1) the plaintiff's alleged trade secrets; and (2) the plaintiff's damages.

I. SUMMARY

The plaintiff filed this lawsuit seeking substantial damages based upon violations of trade secrets laws. Even though four months have passed since this lawsuit was filed and defendants' discovery was served, plaintiff has: (a) failed to describe its alleged trade secrets with any particularity; (b) failed to produce a single document related to "customer lists"; (c) failed to produce a single document related to its "pricing strategies or policies"; (d) failed to produce any damages discovery, damages-related documents, financial documents or any expert witness reports on damages.

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II. FACTS

Defendant's motion is based upon the Declarations of Counsel in Support of Motion to Compel, and accompanying exhibits[1].

A. Defendant Campton Serves and Revises First Discovery Requests at Plaintiff's Requests.

On mid-July, 2005, defendants served "Campton's First Amended Discovery Requests" on plaintiff StonCor Group, Inc. ("Stonhard"). At plaintiff's request, defendants' counsel willingly redrafted discovery, narrowing the scope and time of the requests. On July 20, 2005, the First Amended Discovery was served. In a letter accompanying service of the July 20 discovery, defendants' counsel responded to plaintiff's immediate refusal to provide any information about Stonhard's revenues by stating that "[y]our client has alleged damages relating to the potential loss of Costco revenue and the history and trends related to that revenue stream is relevant to Mr. Campton's defenses." *See* letter from B. Gaviria to M. Marisseau, dated July 20, 2005. No revenue information relating to damages has ever been produced.

Defendant answered by serving partial responses and objections on July 26, 2005. Of Campton's 24 Interrogatories, the plaintiff refused to answer Interrogatories 6-8, 13, 22 and 24; and Requests for Production 7, 11, 13, 14, 16, 18 and 20-22, citing objections to confidentiality or that the discovery requests were "not likely to lead to admissible evidence." Other objections were made on the basis of confidentiality. Notwithstanding the fact that counsel for defendants had offered to and executed a Stipulation to a Protective Order, plaintiff continued to refuse to answer. To this date, no answers have been given.

[1] Factual citations are directly to the exhibits to the Declaration in Support.

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B. Plaintiff Refuses to Answer Requests regarding Personnel, Financials, Damages, Experts, or Trade Secrets.

Defendants have been given little information on the plaintiff's alleged trade secrets. No description or identification of the trade secrets can be gleaned from the complaint. In defendant's Amended First Discovery Requests to specifically identify each and every trade secret, the plaintiff responded: "[t]he trade secrets misappropriated by defendants include StonCor's installer list/network, StonCor's pricing strategy and policies, and customer lists." *See* Answers to Defendant's First Discovery Requests, no. 11. Defendant was given no information Stonhard's alleged pricing strategy and policies, and customer lists.

1. Customer Lists.

When defendant tried to probe the customer lists in other discovery requests, plaintiff responded that the information was secret, confidential, and then later, in a supplemental disclosure, gave a short list of customers that defendant has allegedly misappropriated, with no other information. Rick Neill testified that the customer list includes customer history information. R. Neill Dep., 167:2-8. The plaintiff has alleged that the customer list contains customer preference information, yet no such information has been disclosed in answers to written discovery and no documents have been produced. Plaintiff accuses the defendant of misappropriating customer list information, yet it refuses and fails to disclose any customer information in discovery.

2. Pricing Policies and Strategies.

Although defendants have tried to probe Stonhard's trade secrets, plaintiff has refused to answer. When defendant asked for "any pricing structures, cost proposals," plaintiff responded:

> **RESPONSE**: Objection. Not likely to lead to the discovery of any admissible evidence. Further, turning over StonCor's confidential and proprietary pricing structures, proposal and

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> bids to a known competitor who has already used such information to his own advantage will further harm plaintiff.

See Plaintiff's Response to Interrogatory no. 24.

3. P-File and Cost Book.

Rick Neill also testified that the P-File was a trade secret, containing customer profitability, ratios, and quotes. When defendant asked for all documents related to "Stonhard's P-File" and "Stonhard's Cost Book," plaintiff's response refused to disclose any informatino:

> **RESPONSE**: . . . (m-o). Objection. Seeks confidential, proprietary and trade secret information. Production of this information to defendants who have already misappropriated or are planning to misappropriate plaintiff's confidential and trade secret information, will further harm plaintiff. Further, requests for plaintiff's Cost Book and P-Files (aka Prospect Files) are overbroad and not likely to lead to the discovery of any admissible evidence.

See Plaintiff's Response to Defendants' Requests for Production No. 5.

4. Damages, Financial Information, Identity of Managers and other Information.

None of the documents produced in discovery include any damages documentation, revenues, sales, or costs. Defendants' counsel sent a letter to counsel, noting that "the objections that you have propounded do not appear to have made in good faith or in accord with the [] Rules of Procedure." *See* letter from B. Gaviria to M. Marisseau, dated July 27, 2005. The letter asked specifically for:

1. The identity of territory manager, field sales managers, group managers and national account managers;

2. Revenues generated by Costco;

3. All communications related to Costco communications, including quality assurance and warranty claims; and

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4. Full and complete answers to Defendant Campton's Amended First Discovery Requests, specifically: Interrogatory Nos. 6-8, 13, 22, and 24; Requests for Production Nos. 7, 11, 12, 14, 16, 18, 20-22.

Defendants have received none of this information. The only responses have been to argue defendants' right to this information.

C. Plaintiff Fails to Answer or Serve Verified Answers to Second Discovery Requests.

Defendant Campton served his Second Discovery Requests in July. Plaintiff returned unsigned, unverified responses, refusing to answer more than one of the five pages of discovery requests. In response to Interrogatory no. 1, regarding identification of all regional managers at Stonhard from Jan. 1, 2003 on, plaintiff objected on the basis that the discovery was "not likely to lead to the discovery of admissible evidence and overbroad." Plaintiff then refused to answer all remaining interrogatories on the basis that each "[e]xceeds the limit of interrogatories allowed pursuant to FRCP 33." In response to Request for Production no. 4, related to documents that related to Stonhard's price increases for products since January 1, 2002, plaintiff's answer was "Objection. Not likely to lead to the discovery of any admissible evidence, is overbroad and seeks confidential and proprietary information." *See* Response to Request for Production no. 4, Defendants' Second Discovery. No one on behalf of the plaintiff signed these discovery responses.

D. Discovery Conference Letter Setting Forth Precise Information Requested.

On October 6, 2005, defendants' counsel again sent plaintiff a letter regarding unanswered discovery requests. Defendants *again* asked for:

1. A copy of the exact p-file that was in Chris Campton possession at Stonhard;
2. A copy of the "customer list," including the list on the [SFA] [sic] system – to which Chris Campton had access;
3. The cost book;
4. A copy of the compilation of customer data (including history and preferences);

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5. A copy pricing negotiation history, pricing strategies and sales marketing strategies;

6. A copy of the written representation of any and all alleged trade secrets;

7. The identity of former managers who have access and knowledge of the alleged trade secrets and are competing in the marketplace;

8. Revenues generated by Costco;

9. Communications between plaintiffs and Costco for the last two years related only to quality assurance, warranty claims, repairs and complaints; and

10. Full and complete answers to defendant Campton's Amended First Discovery Requests: Interrogatory Nos. 6-8, 13, 22 and 24[;] RFP Nos. 7, 11, 12, 14, 16, 18, 20-22.

See letter from B. Gaviria to B. Keeley, dated October 6, 2005. None of these documents or requests were produced in response to this letter.

Defendants' counsel and plaintiff held a discovery conference, but aside from plaintiff's counsel's general response that he would "look into it," not a single response, document or discovery answer has been received.

E. Request for Expert Witness and Damages Discovery.

In the Complaint and in Rick Neill's testimony before this court as long ago as June 28th, he testified about an "injury to Stonhard" resulting in "great harm." Rick Neill Decl. at 4 ¶11. The Complaint repeatedly seeks "damages in an amount to be proven at trial.

Even though defendants' first discovery, served on July 20, asked to "identify each expert, provided a summary of each expert's training and experience, describe the opinions each expert will provide at trial and the facts and bases for each opinion." *See* Defendants' First Discovery, Interrogatory no. 23. The only answer to this request was "[n]ot yet determined."

F. Failure to Produce Expert Witness Discovery and Damages.

Three months after defendant asked plaintiff in discovery to provide its expert witness opinions, plaintiff served its FRCP 26(a)(2) Expert Witness Disclosure. In this

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disclosure, the plaintiff identified an expert who "*is expected to testify about* the amount of profits that StonCor lost"; "*is expected to testify as* to the amount of a reasonable royalty that plaintiff's trade secrets are worth," and other damages. Unfortunately, the expert witness disclosure contains:

1. No report;
2. No opinion;
3. No written summary of opinion;
4. No foundations for the expert's [unformed or unstated] opinions; and
5. No calculations, formula, projections, estimates or any other basis on which the defendants can determine he computes damages.

See Plaintiff's Expert Disclosures. In an October 6th letter, the defendant replied:

> "we have not seen one iota of evidence on your alleged damages. When will we find out what your alleged damages are and how you calculate that number? When will we get any discovery on Stonhard revenues, profits, and financial records? Please help us so that we can defend our case and respond to you."

See letter from R. Farren to B. Keeley, dated October 27, 2005.

Just one month before, the plaintiff filed an Initial Disclosure, which described in part the following relevant documents: "3. Documents that support the computation of damages, which are still being compiled for production." *See* Initial Disclosures, at 7.[2] None of these documents have been produced to date.

To this date, no expert witness report, no damages, no revenues, no profits, no financial information has been produced by the plaintiff. Defendant has also not seen any

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[2] Plaintiff's Initial Disclosures describe several documents "which are still being compiled for production," including printouts of StonCor's email messages and their attachments. See Initial Disclosures, at 7, ¶ 2. None of these attachments have been produced.

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documents from plaintiff, including the cost book, p-file, SFA system or any other documents that relate to the trade secrets.

III. ARGUMENT

A. The Court Should Order Responses to Discovery Under Fed. R. Civ. P. 37(a)(2).

Under Rule 37(a)(2)(B), if a party fails to answer an interrogatory submitted under Rule 33, or fails to permit inspection and copying of documents under Rule 34, a party may move for an order compelling discovery. In this case, discovery responses, including answers to interrogatories and production of documents were due thirty (30) days after service on the plaintiff. Rule 33(a); Rule 34(b). The plaintiff has completely failed to respond to the interrogatories and document requests described above. Although defendants are entitled to the discovery if only "reasonably calculated to lead to" relevant, admissible evidence, this discovery goes *directly* to the core of plaintiffs' lawsuit: information and documents constituting its trade secrets' claims and damages. Stonhard sued Campton and Hi-Tech on July 13, 2005 for untold damages arising from violations of trade secrets laws. *See* Complaint ¶ 25. Plaintiffs repeatedly accuse the defendants of stealing alleged trade secrets, and then allege that it has suffered damages. Defendants are entitled to know what they are defending. The court should enter an order compelling discovery.

B. The Court Should Order Full and Complete Responses to Discovery Under CR 37(a)(2) to Avoid Unfair Surprise.

Generally, the purpose of discovery is "to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute [and thus FRCP 26(b)] is liberally interpreted to permit wide-ranging discovery of information." *U.S. ex rel. Schwvartz v. TRW, Inc.*, 211 F.R.D. 388,392 (C.D. Cal. 2002). Federal courts routinely hold that parties are entitled to discover "any matter that reasonably can be expected to lead to admissible evidence." *Hallett v. Morgan*, 287 F.3d 1193, 1212 (9th Cir.

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2002) (the court abuses its discretion when its "denial of discovery results in actual and substantial prejudice").

Under Rule 37(d), if a party fails to answer discovery, the court in which the action is pending may impose sanctions set forth in CR 37(b) "in regard to the failure as are just," including "(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence; (C) An order striking out pleadings or parts thereof, . . . or dismissing the action or proceedings or any part thereof, ..." In this case, defendant asks that the Court order the following:

1. Compel the plaintiff to answer all interrogatories fully and completely.

2. Compel the plaintiff to produce all documents, including but not limited to those documents related to trade secrets and damages.

3. Defendants ask that the Court enter an award of sanctions in the form of (a) attorneys' fees; and (b) exclusion of evidence or deem certain allegations of the defendants admitted for the purposes of trial.

4. Extend the discovery cutoff to enable the defendants to test the plaintiff's trade secrets and damages discovery.

Under Rule 37(a)(4), if a motion is granted, the court shall, after opportunity for a hearing, require the party whose conduct necessitated the hearing to pay the reasonable expenses incurred in obtaining the order, including attorneys' fees. In this case, defendants ask that this Court award attorneys' fees in favor of defendants.

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Respectfully submitted this 7th day of November, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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